

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 4/21/2017 4:20:57 PM
To: Holland, Luke (Inhofe) [Luke_Holland@inhofe.senate.gov]
Subject: Re: Wall Street Journal: Highway From the Endangerment Zone, 4/19/17

All I do is win.

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Phone / Ex. 6

On Apr 21, 2017, at 11:54 AM, Holland, Luke (Inhofe) <Luke_Holland@inhofe.senate.gov> wrote:

This is great.

From: Jackson, Ryan [mailto:jackson.ryan@epa.gov]
Sent: Wednesday, April 19, 2017 10:18 AM
To: Holland, Luke (Inhofe) <Luke_Holland@inhofe.senate.gov>
Subject: Fwd: Wall Street Journal: Highway From the Endangerment Zone, 4/19/17

Wall Street Journal

<https://www.wsj.com/articles/highway-from-the-endangerment-zone-1492555808>

Highway From the Endangerment Zone

4/18/17 6:50 PM

Scott Pruitt has emerged as a leading voice in the Trump Administration for U.S. withdrawal from the Paris global climate deal, so it's ironic that the Environmental Protection Agency chief is being assailed from the right for being soft on carbon. Too many conservatives these days are searching for betrayals where none exist.

As Attorney General of Oklahoma, Mr. Pruitt successfully sued to stop the enforcement of President Obama's regulations known as the Clean Power Plan, or CPP, and he's preparing to dismantle them for good as EPA administrator. The rap from the right is that he won't challenge the underlying determination for regulating CO₂ emissions known as an endangerment finding. In 2009 the EPA concluded in this finding that carbon dioxide and other greenhouse gases pose a threat to public health and the environment, and this document serves as the nominal legal basis for the CPP and other anticarbon rules.

Mr. Pruitt's critics claim that withdrawing from the CPP without reversing endangerment will strengthen his opponents in the inevitable green lawsuits that are coming. Endangerment findings create a legal obligation for the EPA to regulate the relevant pollutants, even if carbon is far different from traditional hazards like SO_x and NO_x.

The endangerment finding was deeply misguided and flawed in its execution, and nobody fought it more than we did. But there's a practical reason that Mr. Pruitt is right about the risks of trying to revoke it now. The finding has been upheld by the courts, and creating a legally bulletproof non-endangerment rule would consume a tremendous amount of EPA resources, especially at an agency with few political appointees and a career staff hostile to reform.

Technical determinations about the state of the science are supposed to be entitled to judicial deference, but the reality is that the D.C. Circuit Court of Appeals that would hear the case is packed with progressive judges. Climate change has become a theological conviction on the left, so Mr. Pruitt would almost certainly lose either with a three-judge panel or en banc.

The Supreme Court's appetite for such a case is also minimal, since it would run directly at the 2007 ruling in *Massachusetts v. EPA* that prepared the way for the endangerment finding. Justice Anthony Kennedy was in that 5-4 majority.

Mr. Pruitt is already taking on difficult and controversial challenges, so better for the Administration to use scarce political capital where it will make a difference instead of burning it on a doomed mission. The endangerment finding doesn't dictate any specific regulation, and Mr. Pruitt has the discretion to interpret the Clean Air Act to achieve his favored policy outcomes, including to repeal legally tenuous central planning like CPP.

A future Democratic President could use the endangerment finding to revive something like CPP, but then that same Administration could restore endangerment too. Mr. Pruitt is a natural target for the left, but when conservatives are impugning one of the leaders of President Trump's economic deregulation project as a sellout, maybe the problem is the critics, not Mr. Pruitt.

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